

ACLU of Virginia

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State Board of Elections
1100 Bank Street, First Floor
Richmond, Virginia 23219

RE: Comments on Draft Residency Rules

Dear James:

We have reviewed the second draft of the proposed residency rules. While we recognize that this draft attempts to address concerns raised in our and others' comments, many of those concerns are not, in fact, alleviated and are in some instances exacerbated.

We appreciate the addition, in the new draft, of Section 1(c)(iv), which establishes a presumption that an applicant's domicile is the residential address given in the application. We believe this addition will help to ensure that applicants are not unnecessarily or discriminatorily required to provide additional information.

Other changes to the draft, however, go in the wrong direction.

First, we note that under the new draft, in order to acquire a domicile, "a person must intend to make that place his home for an unlimited period of time," where the prior version said, "a person must intend to make that place his home for the time at least." We oppose this change. The earlier version reflects the understanding of domicile set forth in such cases as *Ramey v. Rockefeller*, 348 F.Supp. 780, 788 (E.D.N.Y.1972) (quoting the Restatement (Second) of the Conflict of Laws § 18 (1971)), and recognizes that a person may have a series of homes, each for a finite period of time. By contrast, the phrase "an unlimited period of time" implies that the person intends never to move from the location, which has never been a prerequisite for domicile.

Second, we remain opposed to the statement, now in Section 2(c), that "[a] person with specific intent to abandon his current location at a fixed date in the future has not established the requisite intent for the purposes of establishing domicile." As explained in our previous comments, this limitation excludes individuals who may make a place their home for a substantial – but fixed – period of time. We understand that you have attempted to address this issue with the new Section 2(d), which provides that a person may have the requisite domiciliary intent even if he "may leave in the future, upon the happening of a future contingency." But this does not really alleviate the problem. Most students, for example, do not view graduation as a "contingency," but a certainty. If asked whether they plan to leave the locality at a fixed date in the future, they would not say "yes," not "yes, if I graduate."

The same may be true of a person with a long-term, but finite, work assignment in a particular locality.

For the same reasons, we continue to object to the “supplemental question” set forth in Section 17(b): “Do you have a specific plan to move from this county/city at a fixed date in the future?”

Third, for the reasons set forth in our previous comments, we continue to object to the following provisions: (1) The phrase “and has no specific intent to return to his former home after leaving school or graduating” in Section 14; and (2) Section 16(b), allowing the registrar to request additional information if the applicant’s mailing address is in a different locality from the residential address. We also continue to urge that the rules explicitly provide that a registration is effective as of the date it is postmarked or hand-delivered, so that applicants who submit their applications before the deadline are not precluded from voting because their registration is delayed by requests for more information.

Attached is a redlined version of the draft rules incorporating our suggestions.

Sincerely,

Rebecca K. Glenberg